



## Research & Grants Management Procurement Policy

EFFECTIVE: JULY 1, 2018

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## I. Introduction

This is the formal NBER Procurement Policy (“Policy”). This Policy, and the associated processes, procedures, tools, training and templates, provide the framework which governs procurement for federally funded research programs and projects here at the NBER. This Policy will be distributed to each Principal Investigator (“PI”) upon being awarded a Federal grant. It is the responsibility of the PI performing procurement activities to read and understand this policy. If there are any questions regarding this policy, please contact the Director for Research and Grants Management.

## II. Purpose

The purpose of this Policy is to inform those carrying out a project financed, in whole or in part, by a federal award, either federal source or pass-through<sup>i</sup> entity, of the requirements for procuring the goods, works, and related services required for the project. However, it does not govern expenditure of funds received from other sources (e.g. research foundations, donations, etc.). These standards are furnished to ensure that such procurements are obtained in a cost effective manner and in compliance with the provisions of applicable federal regulation. Please be advised, individual federal grants may contain additional requirements unique to the grant, it is the responsibility of the PI to know and comply to the requirements of the grant.

## III. Standards of Conduct

The NBER values integrity in its sponsored projects and procurement processes. To ensure compliance with federal guidelines and transparency in project purchases, special attention must be given to the following relationships and circumstances between NBER employees and suppliers.

### **Employee and/or Agent Conflict of Interest**

No NBER employee or agent (“NBER Personnel”) may participate in the selection, award, or administration of a contract or purchase funded by federal grant dollars if he or she has an actual or apparent conflict of interest. Such NBER Personnel may not derive any personal financial or other benefit from any contract or transaction using federal grant funds. This prohibition includes, but is not limited to, procurements involving spouses/partners, parents, children and siblings, individually or with ownership or financial interest in any supplier that such close relationships could give rise to an appearance of conflict.

### **Contractors/Consultants Conflict of Interest**

Contractors or consultants that draft bid specifications or requests for proposal, or any other purchasing request, on the NBER’s behalf are thereby disqualified from bidding on the opportunity. While such contractors or consultants are not automatically disqualified from other opportunities, care must be taken to ensure that the work for the NBER does not afford unfair advantage over competitors.

### Organization Conflict of Interest

Procurements from any current or future NBER parent, affiliate, or subsidiary organizations are prohibited. Organizational conflicts of interest are considered restrictive of competition when requesting proposals for procurements.

### Disciplinary Action for Violation of Standards of Conduct

The Standards of Conduct should be adhered to by all NBER Personnel at all times. Violations of the Standards of Conduct may result in disciplinary action. Given the range of circumstances under which a conflict or potential conflict of interest could develop, it is impossible to list all the conceivable and appropriate disciplinary actions. However, the NBER may levy disciplinary action such as, but not limited to: verbal warnings, written warnings, fines, suspension, or termination.

### Gratuities, Rebates, and Gifts

NBER Personnel should neither solicit nor accept money, loans, credits, entertainment, favors, services or gifts from current or prospective suppliers. Such gratuities, even if of seemingly low value, can give rise to a conflict of interest or the appearance of a conflict of interest. In particular, NBER Personnel should never accept gratuities from a current or prospective supplier that has submitted or may submit a bid for an NBER contract for which a bid solicitation is being contemplated, developed or accepted. If it is deemed necessary to visit a supplier site for a demonstration, the NBER will pay all related expenses. Suppliers who offer inappropriate benefits or rewards to individual NBER Personnel shall be immediately reported to the Director of Research and Grants Management.

## IV. Procurements and Purchases

All procurements for federally funded projects must comply with The Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*<sup>1</sup> ("UG"). The UG is an authoritative set of rules and requirements for federal awards. All purchases for a federal award must be necessary to carry out the federal award. This section provides guidance on the procurement by aggregated dollar amount.

Table 1 - Procurement Guideline Summary

Requirement	Micro-purchase	Small Purchase	Sealed Bids	Competitive Bids	Sole Source
<b>Purchase</b>	< \$10,000	<\$ 250,000 <sup>2</sup>	Any	Any	Any
<b>Bids/Quotes</b>	None	Yes	Yes	Yes	None
<b>Description</b>	None	None	Yes	Yes	Yes
<b>Cost Analysis</b>	None	None	Yes	Yes	Yes
<b>Advertisement</b>	None	None	Yes	Yes	None
<b>Suppliers</b>	None	3+	2+	3+	1
<b>MBE/WBE</b>	None	None	Yes	Yes	None
<b>Advertise</b>	None	None	Yes	Yes	None
<b>Document</b>	Yes	Yes	Yes	Yes	Yes

<sup>1</sup> 2 CFR 200

### Micro-Purchase<sup>3</sup>

Contracts and purchases of an aggregate dollar amount less than \$10,000<sup>4</sup> do not require competitive quotes if the PI determines the price for goods or services is fair and reasonable. To the extent practicable, NBER PIs must distribute micro-purchases equitably among qualified suppliers.

### Small Purchase<sup>5</sup>

Contracts and purchases of an aggregate dollar amount between \$10,000 and \$250,000<sup>6</sup> require quotes from at minimum three (3) suppliers. If there is any doubt or question a procurement may be greater than \$250,000, NBER Personnel should follow the sealed or competitive requirements. NBER Personnel must award contracts on a fixed-price or not-to-exceed basis (please see *Other Applicable Requirements to Procurements, Limitations on Time and Material Contracts*) and include applicable UG contract provisions (please see Appendix C) in writing. The procurement or purchase should not be divided in such a manner to intentionally undermine this requirement. Finally, the PI must keep records of the request to suppliers, a list of suppliers to which the request was submitted, quote/bid response, as well as the determination or justification for the awarded supplier.

### Sealed Bids<sup>7</sup>

A sealed bid is a process in which all bidders simultaneously submit sealed bids to the NBER, so the supplier's identity and content of each bid is confidential and unknown. In general, this form of bidding is most appropriate for construction contracts, however it may be used in other contexts when circumstances dictate it appropriate. The following must be satisfied for all sealed bids:

Before soliciting for bids, NBER Personnel must complete a description of the request. The description of the request should include complete, accurate, and realistic specifications which should also contain evaluation criteria, pertinent attachments, or definition of requirements for supplier to properly respond.

For bids with an expected spend over \$250,000, NBER Personnel must conduct a preliminary cost analysis before soliciting bids. If there is any doubt or question a procurement may be greater than \$250,000 NBER Personnel should conduct the cost analysis. The analysis is dependent on the facts surrounding the procurement situation, but as a starting point, NBER Personnel must make independent estimates before receiving bids or proposals.

***The request for responses must be advertised. NBER Personnel may advertise the sealed bid request must be publicized the advertisement bid opening (due) date, time, and location.***

The NBER may only open sealed bid responses for a particular request if at minimum two (2) bids are received; the bids must have been submitted sealed and on time. Sealed awards must be to the lowest

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<sup>3</sup> 2 CFR §200.320 - Methods of procurement to be followed.

<sup>4</sup> 41 USC 1902, NDAA Section 806.

<sup>5</sup> 2 CFR §200.320 - Methods of procurement to be followed.

<sup>6</sup> NDAA Section 805.

<sup>7</sup> 2 CFR §200.320 - Methods of procurement to be followed.

responsive, responsible bidder; the Director of Research and Grants Management approval is required unless the delegated award authority has been afforded to an individual NBER Personnel member.

### Competitive Bids<sup>8</sup>

Competitive bidding is a process in which all bidders simultaneously submit bids to the NBER, but the supplier's identity and the content of each bid is open. The following must be satisfied for all competitive bids:

Before bidding begins, the request for proposal ("RFP") must identify all factors, criteria, and the relative importance for which responses will be evaluated<sup>9</sup>. The criteria should include a clear and accurate description of the technical requirements for the material, product, or service to be procured but should not unreasonably restrict competition. The description may include a statement of the qualitative nature of the material, product or service, and the minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use<sup>10</sup>.

In addition, ahead of bidding, ***the RFP must be advertised<sup>11</sup>. NBER Personnel must advertise all RFPs.*** For bids with an expected spend over \$250,000, NBER Personnel must conduct a preliminary cost/price analysis before soliciting bids. If there is any doubt or question a procurement may be greater than \$250,000, NBER Personnel should conduct the cost analysis. The analysis is dependent on the facts surrounding the procurement situation, but as a starting point, the NBER Personnel must make independent estimates before receiving bids or proposals.

Supplier responses must be evaluated on the relative importance of the factors and criteria as publicized in the RFP. Contracts and orders must be awarded to the supplier deemed most advantageous to the program, with price and other factors considered.

If the competitive proposal is for architectural/engineering professional services, price need not be the determining factor so long as the fees charged are subject to negotiation, fair and reasonable.

### Sole or Selected Source Purchase

A Sole or Selected Source purchase is a purchase, which is not competitively bid, from a desired supplier because it satisfies specific criteria<sup>12</sup>. A sole source justification is appropriate if *only one supplier* can provide a needed good or service, in the event of a public emergency which cannot permit delay, a federal awarding agency or pass-through entity expressly authorizes it, or, after soliciting several sources, competition is determined inadequate. When a sole source is requested, a Sole Source Justification and Individual Disclosure Statement must be completed (Appendix A) with the exception of when a federal agency or pass-through entity expressly authorizes the purchase. *Each* person involved in the recommendation for Sole Sourcing must complete the disclosure form.

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<sup>8</sup> 2 CFR §200.320 - Methods of procurement to be followed.

<sup>9</sup> 2 CFR §200.319 - Competition.

<sup>10</sup> 2 CFR §200.319 - Competition.

<sup>11</sup> 2 CFR §200.320 - Methods of procurement to be followed.

<sup>12</sup> 2 CFR §200.320 - Methods of procurement to be followed.

The form will be reviewed and approved by Research and Grants Management before any order or commitment may be placed with the proposed vendor.

## V. Documented Procurement

Regardless of the dollar level of the purchase, PIs are responsible for maintaining accurate documentation around each procurement process for purchases from funds with their federal awards.

## VI. Other Applicable Requirements to Procurements

The following requirements are applicable to all procurements and should be considered in the normal course of procuring goods and service with funding from a Federal award.

### Small and MBE/WBE Businesses

NBER Personnel must take affirmative steps to include small business, minority business enterprises, and women business enterprises (“MBE/WBE”) suppliers whenever practical<sup>13</sup>. Affirmative steps include, but are not limited to, placing qualified MBE/WBE businesses on solicitation lists, assuring MBE/WBE suppliers are solicited whenever they are potential sources, dividing total requirements (when economically feasible) into smaller tasks or quantities to permit maximum participation by small and MBE/WBE suppliers, establishing delivery schedules (where the requirements permit) which encourage participation, using services and assistance (such as Small Business Administration and the Minority Business Development Agency), and requiring the prime contractor (if subcontracts are to be let) to take the affirmative steps to subcontract work to such suppliers.

### All Contracts Must Contain Relevant UG Provisions

All NBER awarded contracts under the Federal award must contain relevant UG provisions<sup>14</sup>. Please see 2 CFR Section 200 - *Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards* attached hereto as Appendix C.

### Limitations on Time and Material Contracts

All awarded contracts should be on a fixed-price basis. In the event that a time and material or hourly contract is necessary, there must be a not-to-exceed provision that the supplier surpasses at its own risk<sup>15</sup>.

### Duplicative Purchases Discouraged

NBER Personnel performing procurements under a federal award should always consider the purchasing method for greatest economy and efficiency. To promote responsible use of federal award funds, NBER

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<sup>13</sup> 2 CFR §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

<sup>14</sup> 2 CFR §200.326 - Contract provisions.

<sup>15</sup> 2 CFR §200.318 General procurement standards.

Uniform Guidance, Section 200.74, Pass-through entity. *Pass-through entity* means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Personnel should leverage shared services, group purchasing, or consortium arrangements across the Federal Government, state and local intergovernmental agreements, or existing NBER agreements where appropriate for procurement or use of common or shared goods and services. Likewise, unnecessary or duplicative purchases should be avoided by consolidating or breaking out procurements to obtain a more economical purchase<sup>16</sup>.

### **Divided Procurements**

Under no circumstances may an aggregate procurement be divided to undermine this Policy or the Uniform Guidance rules, unless NBER Personnel can document that breaking out procurements would have a material economic effect on the total purchase (in accordance with the section above).

### **Estimated Contract Costs**

Costs or prices based on estimated costs for contracts under the federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable under the NBER's Research Manual and/or Accounting Manual.

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<sup>16</sup> 2 CFR §200.318 - General procurement standards.



# Procurement Policy Acknowledgment of Receipt

This will acknowledge that I have received a copy of the National Bureau of Economic Research's ("NBER") Research and Grant Management Procurement Policy which contains important information pertaining to purchases made with funds from a federal award. I am familiar with the requirements and expectations set out in this policy and understand that I am expected to comply with these requirements and guidelines as well as The Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

I further acknowledge that I should be compliant with any other policies or procedures related to my work with the NBER and to any legal, regulatory, and policy provisions pertaining to my federal award.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

# Appendix

# Appendix A

# Sole Source Justification

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A sole source justification is appropriate if only one supplier can provide a needed good or service greater than \$10,000. When a sole source is requested, a Sole Source Justification and Individual Disclosure Statement must be completed (forms below). Each person involved in the recommendation for Sole Sourcing must complete the disclosure form.

## Source

- Sole Source - No other supplier with known capability, proprietary or patented product/service
- Selected Source - Alternative suppliers exist but selection was based on alternative criteria

## Reason (please see next page for *Guidance*)

- Good/Service is unique (be sure to explain research requirements and relevance below)
- Continuity of existing research
- Critically important features (be sure to detail features and your research of comparable items below)
- Repairs, replacement parts, or technical service from manufacturer or authorized distributor only
- Compatibility with existing equipment
- Emergency purchase (life, health or property is in jeopardy)
- Specific supplier is identified in writing as a requirement of the sponsored project award (attach copy)

## Justification & Explanation

*Please provide additional detail and of your selection above. Please include any correspondence with suppliers, sources initially considered but cannot be used (and why?), inquiries made with other research institutions, and/or any other relevant attachments.*

Click or tap here to enter text.

## Sole Source Guidance

The guidance below is intended to help requisitioners elaborate on the criteria fitting the product / service for the sole source reason. Please use the explanations below to advise on your "Reason" selection and "Justification" memo. Be specific and thorough in the memo.

### **Good/Service is unique (be sure to explain research requirements and relevance below)**

The product has no competitive product and is available from only one supplier. Includes proprietary products, patented products, and prototypes. The item is a one of a kind product which has essential unique design/performance features providing superior utility not obtainable from similar products. The existence of limited rights in data, patent rights, copyrights, secret processes, the control of basic raw material, or similar circumstances make the supplies or services available from only one source.

### **Continuity of existing research**

The product must comply with established standards and is available from only one supplier. Changing brands or manufacturers would compromise the continuity of the project.

### **Critically important features (be sure to detail features and your research of comparable items below)**

The product must meet physical design or quality requirements or demonstrates a unique capability to provide a particular function and is available from only one supplier.

A service that demonstrates a unique and innovative concept or demonstrates a unique capability of the source to provide the particular services requested or proposed. In this context, the term does not mean that the source has the sole capability of performing the service. A service is considered unique and innovative when: 1) It is the product of original thinking submitted by a single source, 2) contains new, novel, or changed, 3) concepts, approaches, or methods, 4) was not submitted previously by another; and 5) is not otherwise available within NBER already.

### **Repairs, replacement parts, or technical service from manufacturer or authorized distributor only**

The product is a replacement part for a specific brand of existing equipment and is available from only one supplier.

### **Compatibility with existing equipment**

The product must match an existing brand of equipment for compatibility and is available from only one supplier. Products that are an integral repair part or accessory compatible with existing equipment. Products that, although not an integral repair part or accessory, must be compatible with existing equipment, systems or a substantial parts inventory and compatibility is the overriding consideration.

### **Emergency purchase (life, health or property is in jeopardy)**

The product/service was purchased because of a public exigency or emergency that could not permit a delay, therefore no time for a competitive solicitation.

### **Specific supplier is identified in writing as a requirement of the sponsored project award**

A product that is specifically and clearly required by a lender, grantor (such as the Federal government) or other provider of funds where the usage of those funds is specifically, explicitly, and clearly restricted by the lender, grantor, or other provider.

# Individual Disclosure Form

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The following form must be completed for any purchase over \$10,000. According to 2 CFR 200.318, no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he/she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employees or is about to employ any of these parties has a financial or other interest in or a tangible personal benefit from the supplier considered. The employees, officers, and agents of the NBER may neither solicit nor accept gratuities, favors, or anything of monetary values from suppliers or parties to subcontracts.

**Do you, or any member of your family have any financial or other interest in any consultant, contractor, supplier or other entity that will receive payments from the NBER under this federal award project, or would you receive a tangible benefit from entering into an agreement or issuing a purchase order with any consultant, contractor, supplier or other entity? If "YES", enter the appropriate information below.**

Yes

No

<b>Supplier Name</b>	<b>Financial or Other Interest and Benefits</b>
Click or tap here to enter text.	Click or tap here to enter text.

## Employee Certification

We / I hereby certify that the information provided in this form is complete and accurate to the best of my knowledge and that I will:

- Adhere to the NBER's Procurement and Standards of Conduct Policy;
- Update the Director of Research & Grants Management if the information or interest of this disclosure should change during the contract;
- Comply with any conditions or restrictions imposed by the NBER to manage, reduce, or eliminate conflicts of interest.

WE / I also certify that no other NBER employee participated in the development of this proposal or solicitation, nor provided advice to a bidding supplier other than routine administration recommendations.

Employee Name	Signature	Date

# Appendix B

# Procurement Bid Form

This form is completed by the NBER employee authorizing the expenditure of federal grant funds in excess of \$10,000 for a particular purchase, even if paid through multiple invoices. This form must be approved by the grants administrator prior to sending the accepted bid to the supplier.

## Bid Details

Federal Funding Agency: \_\_\_\_\_ NBER Project No.: \_\_\_\_\_  
 PI Name (print): \_\_\_\_\_ Email: \_\_\_\_\_  
 PI Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Supplier Name: \_\_\_\_\_ Cost: \_\_\_\_\_

## Description

Click or tap here to enter text.

## Specification

Click or tap here to enter text.

## Requests Less Than \$250,000 *(check all that apply)*

- At minimum, three (3) supplier were solicited for a bid/quote
- MBE/WBE suppliers were solicited for a bid/quote
- All solicited supplier bid/quotes and other relevant documents are attached to this form
- Lowest cost accepted
- Lowest cost not accepted, explanation below:

## Requests Greater Than \$250,000 *(check all that apply)*

- Formal request was created with detailed specifications, evaluation criteria, and other attachments necessary for a supplier to tender a reasonable bid
- Cost analysis has been performed before receiving bids
- MBE/WBE suppliers were solicited for a bid/quote
- Formal request was advertised with a due date, location, and time for submission
- Bids were evaluated on specification and criteria in formal request, that evaluation is documented and attached



# Individual Disclosure Form

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The following form must be completed for any purchase over \$10,000. According to 2 CFR 200.318, no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he/she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these parties has a financial or other interest in or a tangible personal benefit from the supplier considered. The employees, officers, and agents of NBER may neither solicit nor accept gratuities, favors, or anything of monetary values from suppliers or parties to subcontracts.

**Do you, or any member of your family have any financial or other interest in any consultant, contractor, supplier or other entity that will receive payments from a NBER under this Federal award project, or would you receive a tangible benefit from entering into an agreement or issuing a purchase order with any consultant, contractor, supplier or other entity? If "YES", enter the appropriate information below.**

Yes

No

<b>Supplier Name</b>	<b>Financial or Other Interest and Benefits</b>
Click or tap here to enter text.	Click or tap here to enter text.

## Employee Certification

WE / I hereby certify that the information provided in this form is complete and accurate to the best of my knowledge and that I will:

- Adhere to the NBER's Procurement and Standards of Conduct Policy;
- Update the Director of Research & Grants Management if the information or interest of this disclosure should change during the contract;
- Comply with any conditions or restrictions imposed by the NBER to manage, reduce, or eliminate conflicts of interest.

WE / I also certify that no other NBER employee participated in the development of this proposal or solicitation, nor provided advice to a bidding supplier other than routine administration recommendations.

Employee Name	Signature	Date

# Appendix C

## Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the federal agency or non-federal entity, all contracts made by the non-federal entity under the federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the

purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]